IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 18092 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SHREE SANTOSHI CHARITABLE TRUST - Petitioner(s)

Versus

STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :

MR KK TRIVEDI for Petitioner(s) : 1,
MR. D.A.DESAI, ASST. GOVERNMENT PLEADER for Respondent(s) : 1,
None for Respondent(s) : 2 - 3.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 19/09/2005

ORAL JUDGMENT

1.Rule. Shri Dipen Deai, learned AGP waives service of Rule on behalf of respondents.

2.With the consent of parties, the matter is taken up for final hearing today.

3.In this petition under Articles 226 and 227 of the Constitution of India, the petitioner Trust has challenged the legality and validity of the order passed by the Revisional Authority i.e. Joint Secretary (Revision), Panchayat, Rural Housing and Rural Development Department, Gandhinagar in dismissing the said revision application confirming the order passed by the Taluka Development Officer, Kamrej dated 18.1.2005.

4.It appears from the record that the petitioner Trust has applied for allotment of the land bearing S.No. 131/139 situated at village Sarthana, Taluka Choryasi, District Surat and as per the procedure and requirement opinion of the concerned Panchayat was also required to be obtained and therefore, a Resolution came to be passed by Sarthana Gram Panchayat dated 9.12.2004 passed vide Resolution No.57 dated 9.11.2004 opining that the Panchayat has no objection. The aforesaid Resolution No.57

dated 9.11.2004 passed by Sarthana Gram Panchayat came to be taken under suo-motu review by the Taluka Development Officer, Kamrej and the T.D.O. Kamrej by order dated 18.1.2005 permanently stayed the aforesaid resolution. Feeling aggrieved and dissatisfied with the order passed by the T.D.O., Kamrej dated 18.1.2005 in permanently staying the Resolution No.57 dated 9.11.2004 passed by the Sarthana Gram Panchayat, the petitioner preferred revision application before the State Government and the Revisional Authority in State Government i.e. Joint Secretary (Revision), Panchayat, Rural Housing and Rural Development Department by its order dated 23.2.2005 dismissed the said Revision Application. Being aggrieved and dissatisfied with the order passed by the T.D.O., Kamrej dated 18.1.2005 as well as the order passed by the Revisional Authority, State Government dated 23.2.2005, the present petitioner Trust has preferred the present Special Civil Application under Articles 226 and 227 of the Constitution of India.

5.Learned advocate appearing on behalf of the petitioner has submitted that the order passed by the T.D.O., Kamrej in suspending and/or permanently staying the Resolution passed by the Panchayat dated 18.1.2005 is passed without giving any opportunity of hearing to the petitioner and therefore, the same could not have been confirmed by the Revisional Authority. Under the circumstances, it is requested to allow the present Special Civil Application.

6.It is required to be noted that the opinion of the concerned Panchayat is not final and it is only recommendatory in nature and it is ultimately for the Collector and/or the State Government to pass an appropriate order with regard to allotment of land in question. Therefore, merely because the Resolution is permanently stayed, it will not bind the Collector and/or the State Government. The order passed by the T.D.O., Kamrej is as such an administrative order and when the Resolution of the Panchayat is recommendatory in nature only, even if the same is set aside, it cannot in any manner come

in the way of the Collector concerned and/or the State Government in passing an appropriate order in accordance with law and on merits at the time of allotment of the land if any.

7. Under the circumstances, subject to aforesaid observation, the present Special Civil Application stands disposed of accordingly.

8. RULE stands discharged, however, there will be no order as to costs.

(M.R.SHAH, J.)

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